

PERSPECTIVES ON HUMAN TRAFFICKING FROM INTERNATIONAL, MALAYSIAN AND ISLAMIC LAWS

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Nowadays, human trafficking has becoming a serious crime worldwide. There are about 2.5 million people trafficked every years around the world. Some report shows that nearly one-third of the world's total human trafficking originates from Southeast Asia where syndicate trafficked women and children to Australia, Thailand, Hong Kong, Singapore, Japan, and the United States.¹ They were brought across the borders for trafficking purpose where they were exploited by the traffickers for two (2) main purposes; labor and sexual exploitation. Out of this number, 1.2 million of the victims are under the age of 18. The record shows that 225,000 victims were from Southeast Asia and 596 15,000 were from South Asia. The global black market for human trafficking in Malaysia is enormous, in which the victims encompass man, woman and children. It is estimated to generate between US\$13-US32 billion a year.²

This transnational organized crime is regarded as one of serious threat to the world in the eyes of laws. Therefore, this paper will explore the available international human rights and the laws governing human trafficking in Malaysia. There will be a discussion on the current situation and cases of human trafficking in Malaysia. By understanding and observing these, it will help to conclude that the trafficking has violated the rights of human and governing laws in Malaysia. The paper will also be looking at Shariah and Islamic Law perspectives on human trafficking, and to a certain extent the stand taken by Muslim countries on the issue.

¹ Kara C. Ryf, (2002). "The First Modern Anti-Slavery Law: The trafficking Victims Protection Act of 2000", 34 Case W.Res. J. Int'l L. 45, 47.

² Stanslas. P. T. (2010). Transborder Human Trafficking in Malaysian Waters: Addressing the Root Causes. Journal of Maritime Laws and Commerce, 41 JMARLC 595, 1-9.

1) PERSPECTIVE ON HUMAN TRAFFICKING FROM INTERNATIONAL LAWS

1.1 UN Universal Declaration of Human Rights 1948

UN Universal Declaration of Human Rights 1948 is the main international declaration governing human trafficking for most of countries in the world. The introduction of the UN Universal Declaration of Human Rights 1948 is in line with its objective as “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.³ There are about (198) countries under United Nation⁴ and majority of them ratified to the declaration including Malaysia. In the declaration, there are about thirty (30) excellent articles available relating to the human rights. In relation with human trafficking, there are about seven (7) articles that have a major impact to it, namely article 3, 4, 5, 6, 7, 23 and 13. The other article which is seldom considered by any writer or researcher is Article 24. Other than that, the rest of the articles in the declaration are still inter-related and relevant with the trafficking, but they did not pose a major impact to the issue. In this discussion, the attention will be given to the (8) principal articles which is appropriate with it ulterior purposes to safeguard human freedom, justice and peace.

The following table illustrated the violation of UN Declaration of human right, along with some example based on current cases and situation specifically in Malaysia:

BIL	ARTICLE	CONTENT OF ARTICLE	EXAMPLE OF VIOLATION
1	3	Everyone has the right to life, liberty and security of person.	i) The liberty and freedom of the victim is restricted. The victim is locked in locked home ⁵ and their passport is hold by the syndicate. ⁶ The objective is to restraint the

³ Preamble, Universal Declaration of Human Rights

⁴ “Member States of the United Nations (and the dates on which they joined the Organization),” United Nations Human Rights, <<http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>> (accessed 22 May, 2013).

⁵ PP v Lim Chee Chong; PP v Kong Kok Kyt & Lee Vo Tu Uyen. Ipoh Sessions Court, Perak. Case No: 62-127-2008

⁶ Royal Malaysian Police. (2013, September). Organised Crime: Government Initiatives, Laws and Investigation of Human Trafficking in Person and Smuggling of Migrants in Malaysia. Paper presented at International Conference on Trafficking organized by World Youth Foundation, Malacca.

			<p>freedom of the victim.</p> <p>ii) The life and security of the trafficked person is endangered by the syndicate especially when they are transferring from a country to the other country across the border. They are loaded in a boat across the sea boarder without any security.</p>
2	4	No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.	The victim is forced to be house slave which they are force to do housework without being paid. Thus, this is contrary the law against servitude and forced labor.
3	5	No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.	<p>The victim is tortured and beaten⁷ by the syndicate when they fail to comply with the order. This is normally happen in prostitution case when the victims refuse to treat the sexual need of the customer.⁸</p> <p>Today, the detention and the tie over the victims are done by the syndicate through debt, threat and harm.⁹</p>
4	6	Everyone has the right to recognition everywhere as a person before the law.	In most of cases, women's right in politic, economy, and property ownership is denied compare to man. ¹⁰

⁷ Ms Alex Hutton. (2010, August). People Smuggling and Trafficking Laws in Australia. Paper presented at Malaysia-Australia Workshop on Prosecuting People Smuggling and Trafficking organized by Malaysia and Australia, Kuala Lumpur.

⁸ Supra no. 5

⁹ Supra no. 7

¹⁰ Louise Shelley, "Human security and human trafficking" in *Human Trafficking and Human Security*, edited by Anna Jonsson (Asia: Routledge Research, 2007), 11.

5	7	All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.	This is happen when the law available in a country is not practically applied to the victim. For example, the victim is forced to work more than eight (8) hours per day while he works (5) days per week and no rest day per week is given. ¹¹
6	13	(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country.	The rights of the victim are infringed when the syndicate confiscated the travel document ¹² which restrain them from freely move in a state or leaving the country.
7	23	(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the	i) The victim has no choice in work. When they arrive at the destination country, they are forced to work which ordered by the master such as woman is forced to prostitute. ¹³ ii) In some countries, indigenous 'primitive' people are exploited by government agencies for the bonding on their land. In some cases, children are sold or become a force labor to the

¹¹ Malaysia Employment Act 1955.

¹²University of Technology Sydney, Anti-Slavery Project- Strengthening Australia's Response to Human Trafficking, Report to Australian Women's Coalition, March 2010 (University of Technology Sydney, 2010) p. 20.

¹³ Ibid, p. 16.

		<p>right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</p> <p>(4) Everyone has the right to form and to join trade unions for the protection of his interests.</p>	<p>creditors as to settle debt owed by the family.¹⁴</p> <p>ii) The foreign worker is paid lower compared to the local citizen. In addition, they did not receive most of basic benefits of employment. In Malaysia, both foreign workers and local citizens should have equal rights where an employer is required to provide salary and benefits package similar to the domestic workers.¹⁵</p> <p>iii) The employer forced the victim to work with no or low income.¹⁶</p> <p>iv) The victim is culturally and socially isolated¹⁷ from other people.</p>
8	24	<p>Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.</p>	<p>(The explanation as no. 5 and 7)</p>

Any violation against the articles of the declaration is the infringing of the human rights especially to the trafficked persons. The denial of the victim's rights as human is undesirable practice which should be abolished.

1.2 Article 3, Para (a) of Protocol to Prevent, Suppress and Punish Trafficking in Persons

In addition to the above declaration, United Nations which consists from (147) states parties including Malaysia are guided by multilateral treaty against transnational organized crime, adopted

¹⁴ PS Ranjan, "Slavery: A Continuing Evil," *Malayan Law Journals*, vol. 4, no. 10 (1999): 2. Malayan Law Journal Articles, via Lexis Nexis Malaysia, < <http://www.lexisnexis.com/my/>>.

¹⁵ Malaysia Employment Act 1955.

¹⁶ Supra n.6

¹⁷ Supra n.12

in 2000 which is called Palermo Convention. The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more actively.

There are three protocols that supplement the Palermo Convention against Transnational Organized Crime. The main protocol which is directly related with the trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.

Article 3 of the Protocol¹⁸ defines some terms relating to the trafficking. The term of “trafficking in persons” is defined as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

A further definition on “exploitation”¹⁹ has been given which shall include:

“the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

The definition of the crime in the protocol has assisted us to identify the modern practice in the crime where it explains some forms of trafficking available nowadays. The protocol is become widely-cited document and main reference which guided most of it members in defining and interpreting the crime including Malaysia. For most of the cases, the syndicate has succeeded to obtain consent from the victim. Luckily, the same article stated that the consent of a victim to the exploitation is irrelevant in the situation where it involves any elements of threatened, coerced, or

¹⁸ United Nations. 2001. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, General Assembly Resolution 25, Supplement No. 49 (A/45/49). New York: United Nations

¹⁹ Ibid.

deceived.²⁰ This shows that the crime is extremely serious, therefore the consent of victim is not a defense to the culprit in escaping themselves from being punished by laws.

2) PERSPECTIVE ON HUMAN TRAFFICKING FROM MALAYSIAN LAWS

2.1 Federal Constitution

Article 4(1) of Federal Constitution stated that the constitution is the supreme law in Malaysia. Its supremacy is above all laws, bodies and individual in Malaysia. Therefore, any law which is inconsistency with it will be null and void. In relation to human trafficking, there is no article directly express about that. However, Article 6(1) & 6(2) of the constitution express its prohibition on slavery and forced labor. These two (2) practices are complements with the international definition on the crime.

There is no definition given by constitution on the definition of slavery and forced labor. The definition of slavery which internationally accepted can be found in International Convention to Suppress the Slave and Slavery 1926 which defined slavery as:

"the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"²¹

In addition to that, the convention has included forced or compulsory labor under the definition of slavery in 1930 in the ILO Convention as:

"all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."²²

In this situation, it is clear that the act of slavery and forced labor are among the forms of human trafficking which are obviously prohibited internationally and in Malaysia. As established in

²⁰ "International Laws," Anti-Slavery Australia, <<http://www.antislavery.org.au/international-laws.html> > (accessed 22 May 2013).

²¹ *International Convention to Suppress the Slave and Slavery 1926*, 212 U.N.T.S 17, entered into force 18 June 1927, Article 1(1).

²² *Forced or Compulsory Labor Convention*, U.N.T.S 55, entered into force 1 May 1932, Art.2.

Barat Estates Sdn Bhd & Anor,²³ any written law or state action or arrangement which is deprived the right of choice for an employee as in Article 6(2) of constitution would fall foul of the supreme law and should be struck out.

2.2 Anti-Trafficking in Persons and Anti-Smuggling of Migrant Act 2007.

Even though the Constitution of Malaysia is not clearly express the laws relating to the trafficking, Malaysia has it specific law governing the crime in Malaysia as a respond to the international efforts and the report provided by the Trafficking in Persons by U.S Government since 2001²⁴ until now. Malaysia has stepped up its efforts in the eradication of this crime by enacting the principal act.

The main source of reference for the Anti-Trafficking in Persons Act 2007 in Malaysia is based on the international instruments i.e. Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air.

Article 3 of the protocol gave its first international definition of “trafficking” which has help Malaysia in defining the crime. The definition of human trafficking is provided in Section 2 of the Act. The "trafficked person" has been defined as any person who is the victim or object of an act of trafficking in persons. “Trafficking in persons” means all actions involved in acquiring or maintaining the labor or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.

In prosecuting the trafficking cases, it is a need for the prosecution to prove that there is “exploitation” involves in the case.²⁵ Section 2 of the principal Act²⁶ has listed some forms of exploitation which includes all forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, any illegal activity or removal of organs.

²³ See *Barat Estates Sdn Bhd & Anor v Parawakan Al Subramaniam & Ors* [2000] 4 MLJ 107.

²⁴ “Introduction Trafficking in Persons Report July 2001,” U.S. Department of State, <<http://www.state.gov/j/tip/rls/tiprpt/2001/3929.htm>> (accessed 3 Jan, 2013).

²⁵ *Malayan Law Journal Reports/2011/Volume 6/Siti Rashidah bt Razali dan yang lain lwn Pendakwa Raya* - [2011] 6 MLJ 417 - 12 May 2011

²⁶ Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, 2007 (Act No. 2 of 2007).

The purpose of Parliament passed the Anti-Trafficking in Persons Act 2007 is to provide for the trafficking offense, the protection and assistance of trafficked persons, the establishment of the Council for Anti-Trafficking in Persons, and things related to the crime.²⁷ Before the Act was passed, there was much criticism of Malaysia on the efforts taken to combat trafficking in persons. U.S. State Department Trafficking in Persons Report²⁸ has reported about Malaysia's lack of efforts in combating the trafficking.

The report was rejected outright by the Honorable Minister of Women, Family and Community, which clearly expressed the stand of government of Malaysia on the crime which said: "We were very disappointed with the report as it is inaccurate and does not reflect Malaysia's continuous efforts in combating human trafficking. The Malaysian government views human trafficking as one of the most serious threats to human rights and human security and will continue to take Comprehensive Measures to combat human trafficking." (See People's Daily Online, June 15, 2007).²⁹

Thus, the enactment of the Anti-Trafficking in Persons Act 2007 is a manifestation of the government's determination to tackle these issues. The Act is specific legislation encompassing aspects of prosecution, prevention, care and protection to address the crime of trafficking. The pass of the Act by Malaysia's House of Representatives on 10 May 2007 has brought a new light and hope to the Malaysia where it will be a significant tool to effect anti-trafficking reforms.³⁰

The principle Act is currently known as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 after its enforcement on 15 November 2010. The amendment is done in order to strengthen the regulatory framework to deal more effectively with the issues of human trafficking and smuggling of migrants where several provisions is incorporated on smuggling of migrants and other smuggling of migrants-related and ancillary offences.

The act has a wide scope of application where it will apply on the offences conducted either inside or outside Malaysia, and regardless the nationality or citizenship of the offender, in the following situations:

²⁷ Malayan Law Journal Unreported/2008/Volume /Pendakwa Raya v Nam Oithantip - [2008] MLJU 297 - 13 June 2008

²⁸ U.S. State Department Trafficking In Persons Report, June 2007

²⁹ Supra no. 26

³⁰ Ibid.

- i) If Malaysia is the receiving country or transit country or the exploitation occurs in Malaysia.
- ii) If the receiving country or transit country is a foreign country but the trafficking in persons or smuggling of migrants starts in Malaysia or transits Malaysia.

In Malaysia, the trafficking comes in various forms of exploitation. Among the reported forms of exploitation is forced labor, sexual service, selling of baby, and forced marriage.³¹ These criminal acts definitely are against the international and Malaysian laws on human trafficking. Therefore, the culprit person who involves in the syndicate will be punished according to the laws. The highest punishment provided for the offence under the Act is maximum life imprisonment (20) years and fine maximum RM1 million.

2.3 Supplemented Acts for Human Trafficking

Other than the principal Act, there about eight (8) supplemented acts governing human trafficking in Malaysia. They are Immigration Act 1959/63 [Act 155], Malaysian Maritime Enforcement Agency Act 2004 [Act 633], Customs Act 1967 [Act 235], Evidence Act 1950 [Act 56], Court of Justice Act 1964 [Act 91], Child Act 2001 [Act 611], Penal Code [Act 574], and Restricted Residence Act 1933 [Act 377]. These supplemented acts might be available for the procedures and offences which are not governed under the principal Act.

3) ISLAMIC LAW'S PERSPECTIVE OF HUMAN TRAFFICKING

Historically slavery was common in pre-Islamic societies. The prevailing view among Muslim scholars is that Islam did not abolish slavery at the outset. Like the Hebrew Bible and the New Testament, the previously revealed texts, the Qur'an accepted the institution of slavery as an established part of the lives of believers. At the outset, it thus sought to humanize and regulate the practice of slavery rather than seek its outright and immediate abolition. While the Quran thus instructs Muslims to be kind to slaves and to treat them fairly, Islamic teachings of the Quran and the traditions of the Prophet were intended to gradually eliminate the institution of

³¹ Royal Malaysia Police. (2007). Overview Of Human Being Trafficking Problems In Malaysia (Police Perspective). Paper presented at Ceramah Atipsom Di 6 Zon Seluruh Malaysia organized by Australian Customs & Border Protection Services, Selangor.

slavery. This gradual reform, rather than outright abolition of slavery, is consistent with the Islamic philosophy of gradual social change. The prohibition on drinking wine and the prohibition on earning interest on loans were both enacted gradually. At the time when Islam was introduced, the practice of slavery was prevalent and complete, and immediate abolition would have upset the social and economic foundation of society.

In the present day laws exploitation is the key element of the definition of trafficking in persons. It is what differentiates trafficking in persons from similar crimes such as the smuggling of migrants. Exploitation takes a variety of forms. In addition to slavery and practices similar to slavery, the comprehensive definition in that Trafficking in Persons Protocol includes the following forms of exploitation: forced labour or services, the exploitation of the prostitution of others or other forms of sexual exploitation, and removal of organs. The Protocol leaves the definition open to incorporation of other forms of exploitation, as those indicated here are listed “at a minimum”. Islamic law outlines a general prohibition of exploitation and specifically prohibits certain types of exploitation including similarly to the Trafficking in Persons Protocol, the prohibition of labour exploitation, of exploitation of the prostitution of others and of trafficking in human organs. In addition to the practices specifically covered by the Protocol, Islamic law condemns other forms of exploitation, such as those that may arise out of illegitimate adoption practices and forced marriage.

The Trafficking in Persons Protocol includes forced labour and services as a form of exploitation in the definition of trafficking in persons. Trafficking for the purposes of forced labour and services is one of the most prevalent forms of trafficking in persons throughout the world today, and it is particularly important in some wealthy Muslim countries, where large pools of foreign labourers work in construction, in the hospitality industry and as domestic servants, many of them vulnerable to exploitation. This form of trafficking often involves broken or unfulfilled, deceptive contracts, with promised compensation replaced by debt that is to be repaid through work, wages which are a mere fraction of those promised, exploitative working hours which do not reflect those promised, restriction of movement, and hard physical labour often in unbearable conditions.

Islamic labour law clearly prohibits the exploitation of labour. A tradition of the Prophet states the meaning of which

“Give the hired man his wages before his sweat dries”

(reported by Ibn Maajah, 2:817).

As stated in the Quran, 7:85 which means:

“So fulfil the measure and weight and do not deprive people of their due and cause not corruption upon the earth after its reformation. That is better for you, if you should be believers.”

This applies equally to men and women (Quran, 4:32) which means:

“... to men is allotted what they earn, and to women what they earn.”

There are four major principles which are emphasized in Islamic labour law that are particularly relevant when considering the violations of labour practices that constitute forced or exploitative labour under the concept of trafficking in persons. First, if one is employing a worker he must fulfil his contractual obligation “be faithful to your pledge to God when you enter into a pact”. Further, the Islamic tradition advocates that wages must be paid upon a worker’s completion of the agreed upon contract. Thirdly, when there is an agreement to work, compensation must be specified prior to entering into a contract. Finally, in another tradition, the Prophet stated that “if you are employing a worker, you have to tell him how much he will be compensated for his labour.”

Cases of trafficking in persons for forced labour and exploitative labour usually involve the violation of at least one, but more frequently of several of these injunctions. The Islamic legal tradition in the realm of labour law thus provides clear guidelines prohibiting these types of practice. That is an important element in the present compilation of Islamic prohibitions of the various acts and means that constitute trafficking in persons.

The Islamic tradition values work and considers it an act of worship, with recognized rights of the employer and of the employee. Importantly, the concept of a contract in Islam does not exist merely as a legal institution necessary for the satisfaction of legitimate private needs. The very foundation of a contract is a covenant, a pact between God and man. For example, clear and transparent agreements are emphasized before a worker enters into a work contract so the worker

will be protected and motivated to work honestly and securely and contracts are to be duly fulfilled:

“O you who believe! Fulfil the obligations”

the meaning of (Quran, 5:1).

A contract in Islamic law is thus not merely a matter of secular law between the contracting parties, it is of a sacred nature as it is a covenant with God.

Islam condemns the infliction of harm. Inflicting hardship and harm, whether intentional or not, is thus prohibited. Accordingly, subjecting any person to hard labour is likewise prohibited, as illustrated in Quran, 22:78 which means:

“He has chosen you and has not laid upon you in religion any hardship”.

This sentiment is restated in the Quran, 2:185 which means:

“Allah desires for you ease. He desires not hardship for you.”

In so far as forced labour often requires excruciating and harmful forms of labour, Islam thus prohibits these types of practices. Crucially, the illicit means by which persons are frequently trafficked, such as coercion and deception, would also fall under the category of types of labour practices prohibited under Islamic law. Forced labour or services, including such practices as forced begging, are not acceptable in the Islamic tradition, in harmony with the prohibition on trafficking in persons for the purpose of forced labour or services in international law under the Trafficking in Persons Protocol. The Islamic tradition prohibits corrupt, deceptive and coercive practices and thus addresses some of the most important contributing factors to the trafficking infrastructure and illicit means involved in trafficking.

Trafficking in persons for the purpose of sexual exploitation, a recognized purpose of exploitation under the Trafficking in Persons Protocol is one of the most prevalent forms of trafficking in persons throughout the world, including in some Muslim countries. Forced prostitution is one of the most common forms of sexual exploitation that victims of trafficking, especially women and girls, are forced to endure. Often, deceived by promises of employment as

waitresses, saleswomen and similar occupations, women and girls find themselves instead forced into and exploited in prostitution or other forms of sexual exploitation.

Islamic law provides a basis for the prohibition of the act of prostitution in many of the Muslim countries. While the act of prostitution per se may not constitute an offence in some legal systems, Islamic law considers an act of prostitution as a form of sexual exploitation and thus forbids it. Forced prostitution is likewise forbidden, as is sexual exploitation for profit, according to the Quran, 24:33 which means:

“But force not your maids to prostitution when they desire chastity, in order that ye may make a gain in the goods of this life.”

The tradition of the Prophet likewise prohibited taking the earnings of a soothsayer and the money earned by prostitution. It must also be stressed here that the Recommended Principles and Guidelines on Human Rights and Human Trafficking⁸⁹ developed by the Office of the United Nations High Commissioner for Human Rights, stress the importance of non-criminalization with respect to any illegal activities a trafficked victim may have been involved in as a result of being trafficked.

Another form of exploitation defined under the Trafficking in Persons Protocol is that of trafficking in human organs, which involves the illicit provision of human organs to those who need and can afford them and the taking of those organs from poverty-stricken individuals, who may or may not be aware of what the procedure entails, or of its consequences. The price at which the organs are sold to the recipient is far higher than that paid to the so-called “donor” (if they are paid at all).

Islamic law clearly prohibits the buying or selling of a human being or part of his or her body. According to the tradition of the Prophet, it is haram (absolutely prohibited) to deal unlawfully in a Muslim’s blood, property or honour. Islamic law, which holds all human beings to be owned solely by God, thus prohibits the possibility of the sale of another human being, as no human being may be owned by another. By extension, this applies to the sale of a part of a person’s body (with the exception of a mother’s milk).

The prohibition on the sale of human organs has recently been reiterated and supported in a number of Islamic forums and human rights documents. For example, the International Conference of Islamic Jurisprudence, in its decision No. 1 of 1988, emphasized the Islamic position in prohibiting transactions in human organs.³² The donation of a human organ is subject to strict limitations, including that such a donation may not subject the donor to death or bodily harm, that the donation is made with full and informed consent and that the donor is of legal age. Similarly, the limited permissibility of the sale of human organs is subject to dire necessity and is only permissible when the patient cannot find a donor, his life is in danger and he has no other alternative to cure his ailment. And even in such a case, it may be argued that such permission would become immediately null and void if the contract to obtain the necessary organ were to be characterized by deceit, misinformation, coercion or any other violation of a contract in compliance with Islamic law, as discussed earlier. It is thus implied that the brokering of human organs in the fashion in which it occurs within the context of the crime of trafficking in persons would clearly be prohibited by Islamic law.

CONCLUSION

Islamic law is in harmony with the international law on trafficking in persons. The conclusion is supported by the fact that a number of international and regional human rights documents adopted in the Muslim world, as well as some Muslim constitutions and national legislation have all condemned and prohibited trafficking in persons and/or related crimes. For example, Article 13 of the Cairo Declaration on Human Rights in Islam of 1990 states that an employee —may neither be assigned work beyond his capacity nor be subjected to compulsion or harmed in any way. Likewise, since prostitution is prohibited under Islamic law, not only trafficking for the purpose of exploitation of the prostitution of others, but trafficking for the purpose of prostitution is prohibited under the Arab Charter of Human Rights. Article 10 of the Charter makes this distinction, prohibiting —trafficking in human beings for the purposes of prostitution and —the exploitation of the prostitution of others or any other form of exploitation.

³²An earlier *fatwa*, or legal opinion, was issued by the Ministry for Awqaf (Trust) and Islamic Affairs of Kuwait in 1985, stating that the purchase of another's kidney is haram, since God created people in a respectable and beautiful image (Koran, Sura At-Tin 4). Consequently, parts of the body should not be removed and sold for compensation.